

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ALVERENE BUTLER,)
)
Plaintiff,)
v.)
ALABAMA DEPARTMENT OF TRANSPORTATION, <i>et al.</i>,)
)
Defendants.)
)

CASE NO. 2:06-cv-00278-MEF-CSC

DEFENDANTS' MOTION TO STAY

Defendants in the above-styled cause, the Alabama Department of Transportation, Mark Waits, and Todd Jackson, pursuant to Rule 62 of the *Federal Rules of Civil Procedure*, move this Court to stay its final judgment, filed June 15, 2007, (Doc. No. 69), and stay consideration and award of attorneys' fees. As grounds therefor, Defendants state as follows:

1. Defendants are simultaneously filing a notice of appeal to the Eleventh Circuit Court of Appeals from the June 15, 2007, final judgment (Doc. No. 69) and the District Court's order (Doc. No. 77) dated July 12, 2007, denying Defendants' post trial motions.
2. On July 17, 2007, Plaintiff's attorney filed a Motion for Award of Attorneys' Fees (Doc. No. 78). On July 20, 2007, the Court entered an order (Doc. No. 79) setting a briefing schedule for the parties on Plaintiff's motion. Defendants submit that consideration of and a ruling on the award of attorneys' fees will be more appropriate after the Eleventh Circuit Court of Appeals has ruled on the appeal.
3. Pursuant to Rule 62(d), and Rule 62(f) of the *Federal Rules of Civil Procedure*, Defendants request that the Court's final judgment of June 15, 2007, and the consideration and award of attorneys' fees be stayed pending the appeal of this matter to the United States Court of Appeals for the Eleventh Circuit.

4. Defendants further request that they be allowed to submit a response to Plaintiff's request for attorneys' fees after the ruling from the Eleventh Circuit Court of Appeals.

5. Rule 62(f) of the *Federal Rules of Civil Procedure* entitles Defendants to the same type of stay to which they would have been entitled in state court. Rule 62(e) of the *Alabama Rules of Civil Procedure* provides that no *supersedeas* bond shall be required when an appeal is taken by, "the State of Alabama or an officer or agency thereof or by the direction of any department of the government of the State of Alabama." Accordingly, the requested stay is not subject to the posting of a *supersedeas* bond by Defendants.

Wherefore, premises considered, Defendants request a stay of this Court's final judgment, of June 15, 2007, and the consideration and award of attorneys' fees pending appeal to the Eleventh Circuit Court of Appeals.

RESPECTFULLY SUBMITTED,
TROY KING
ATTORNEY GENERAL

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Assistant Attorney General
Assistant Counsel

s/ Jim R. Ippolito, Jr.
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Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that, on July 20, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECT system, which will send notification to the following:

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